IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2517 OF 2004

Suresh Dattatray Devlekar ... Petitioner

versus

State of Maharashtra ... Respondent

...

Mrs. Rucheeta Dhuru, for the Petitioner, amicus curiae.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

19th January 2005

P.C.:

1. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Konde Deshmukh, A.P.P., waives notice for the Respondent. As short question is involved, petition taken up for final disposal forthwith by consent.

2. The short question that arises in the present case is whether the appropriate authority was justified in rejecting the request for furlough leave made by the Petitioner, solely on the ground that the surety offered by the Petitioner was a female and, therefore, not capable of providing adequate surety. This is the only reason which can be discerned from the order which is impugned in the petition. Incidentally, the surety as was offered by the Petitioner is none else but the wife of the Petitioner. Merely because surety as offered happens to be a female, that by itself cannot be a ground for rejecting the surety unless it is further noticed that that person cannot provide adequate surety as is expected by the extant Rules. Perhaps, that enquiry has not been made at all by the authorities in the present case. In the circumstances, the impugned order deserves to be set aside. However, instead of directing the authorities to accept the surety, the appropriate course in the present case is to direct the authorities to reconsider the application preferred by the Petitioner and examine whether his wife can be accepted as valid

surety. If the authority is satisfied in that behalf, it may proceed to pass appropriate orders unless some other reason can be discerned from the record, so as to deny the relief of furlough leave to the Petitioner. The authorities shall consider the case of the Petitioner within three weeks from the date of receipt of writ of this Court. Petition is disposed of with the above directions to the authorities.

3. The Court expresses word of appreciation for the assistance offered by Mrs. Dhuru as amicus curiae.

(A.M.KHANWILKAR,J.)